

The Hindu, Bombay Vs Its Workmen (Working Journalists)

Court: Bombay High Court

Date of Decision: Oct. 3, 1959

Acts Referred: Industrial Disputes Act, 1947 " Section 12(4), 12(5), 2, 3, 36

Citation: (1960) 1 LLJ 110

Hon'ble Judges: Syed Taki Bilgrami, J

Bench: Single Bench

Judgement

1. This is a reference under S. 12(5) of the Industrial Disputes Act, XIV of 1947, read with S. 3 of the Working Journalists (Conditions of Service

and Miscellaneous Provisions) Act, 1955, by the Government of Bombay in respect of a dispute between the Hindu, Bombay, and the workmen

(working journalists) employed under it over the following demand by the latter :-

Sri Salivateeswaran should be paid the following :-

Rs. Notice pay three months" wages at the rate of Rs. 1,276 per month 3,828

Earned leave with wages for three months 3,828

Wages in lieu of medical leave 3,828

Retrenchment compensation at the rate of 15 days" wages for every completed

year of service or any part thereof in excess of six months for 28 years of service 17,864

Gratuity at the rate of 15 days for every completed year of service of 28 years 17,864

Arrears of telephone rental at the rate of Rs. 300 for 1953,

1954, 1955 and 1956 1,200

Travelling allowance due in 1955 1,000

Third increment withheld from January 1955 at the rate of Rs. 100 per month 8,100

Salary from March 1956 till payment

of the said relief for retrenchment

calculated up to 31 August, 1958 at

the rate of Rs. 1,276, further period

to be calculated at the time of

settlement 38,280

2. The union says that Sri Salivateeswaran did his apprenticeship with the Hindu during the period 1924-25. After that he contributed to some

papers and then rejoined the Hindu in 1929 as a correspondent. In 1930 he became a permanent Bombay correspondent. In order to lighten their

burden and to make the correspondents accept a lesser salary, the Hindu used to permit its correspondents to contribute to other papers to

supplement their income. Sri Salivateeswaran by permission of the editor of Hindu also started contributing to the news column of Swadeshmitran.

In 1931 Sri Salivateeswaran went with the editor of Hindu to the Round Table Conference in London. On return from the conference with the

express permission of the Hindu he used to contribute to the Daily Herald in London, and the United Press of America. In 1933 it is said, the

Hindu introduced the system of consolidated payment of wages in the shape of monthly salary, instead of payment on the turnover basis. An offer

of Rs. 150 per month was made to Sri Salivateeswaran which he rejected. The Hindu then asked him to supplement his monthly salary by taking

up the correspondentship of any other English daily. Sri Salivateeswaran started supplementing his income by contributing to Hindustan Times of

New Delhi, and Anand Bazar Patrika of Calcutta. In 1937 he was asked to take over the business department of the Hindu in Bombay in addition

to correspondentship, which he took over from 1 December, 1937 and devoted all his time to the editorial and business side of this paper at

Bombay on a salary of Rs. 300 per month. He discontinued at this time his connexion with the Anand Bazar Patrika but continued to contribute to

Swadeshmitran, Daily Herald and United Press of America, with the permission of the editor of Hindu. During this period he was asked to cover

events of national importance like Gandhiji's fast at Rajkot, and his talks with Lord Linlithgow. He had to travel all over India for this purpose and

as his duties were heavy and his pay insufficient he started pressing the Hindu for a substantial increase. The editor instead of giving him any

increase separated the office into two departments. As a result of this bifurcation Sri Salivateeswaran was relieved of the work on the business side

of the Hindu, and his salary was reduced to Rs. 250 per month. This position continued till 1941. During this period whenever Sri Salivateeswaran

was required to travel his expenses were paid by the Hindu. In 1941 his services were lent to Sri Walchand Hirachand for three months but during

this period also he continued his work as a correspondent of the Hindu at Bangalore. In 1942 his salary was increased and in that year and in

subsequent years bonus was also paid to him. In 1946 Sri Salivateeswaran suggested that a branch should be started in Bombay for issue of a

Bombay edition of the Hindu. He was asked to procure a site and get a building constructed. The plot for this building which was named later

Kasturi Building was selected and all negotiations with Government were carried on by him on behalf of the Hindu. For this he was paid no extra

allowance. Rupees 100 per month however were paid to him for a new feature he introduced which consisted of financial review of the Bombay

markets every week. In 1947 an house-rent allowance of Rs. 150 per month was sanctioned and a bonus of Rs. 440-1-0 was granted in 1949;

his allowance was also increased by Rs. 50. From 1946 onwards he was unable to contribute to other papers as the supervision of the

construction work and negotiations with various authorities about acquisition of land, absorbed most of his time.

3. In 1952 Sri Salivateeswaran got elected to the Legislative Assembly from Matunga-Sion Constituency. At this time he started pressing the

editor to issue a Bombay edition of Hindu, as the permission to acquire the site for building was obtained on this condition. The editor suspected

that having been elected to the Assembly, he was siding with the Government, and asked him to resign the membership. Sri Salivateeswaran

refused to do this. This caused some ill-feeling between him and the editor. In 1954 on account of his ill-health he was advised to go out for a

change. He went to Kashmir, but his health did not improve. In December 1955, he asked for permission of the editor for going abroad. The

management readily granted this and he made preparations to go to Zurich by air. Then suddenly on 16 February, 1956 the editor informed him

that his application for leave could not be traced in the office, and as the office is not prepared to allow frequent breaks, his service will be

terminated if he insisted on going abroad. On 24 February, 1956 he forwarded a medical certificate to the editor and on receiving on reply, he

intimated on 29 that he will be leaving for Zurich on 1 March, 1956. The assistant editor sent a message that the services of Sri Salivateeswaran

were terminated with effect from 1 March, 1956 and this message was confirmed by a letter to him later. On his return to India from Europe Sri

Salivateeswaran demanded by a letter dated 5 July, 1956 that he should be taken back, and the period of his absence should be treated as leave.

The management refused to do this, or pay his dues, whereupon Sri Salivateeswaran filed an application under S. 17 of the Working Journalists

Act before the authority. The Supreme Court in this proceeding held that the Bombay authority had no jurisdiction to entertain this application.

After this the present dispute was raised which was referred to this tribunal.

4. The union says that the termination of the services was an illegal act and was done in bad faith, the sole object of the management in raising all

kinds of legal and preliminary objections being to delay the proceedings, and to defeat the claim by tiring the claimant out. The amount claimed,

though very large, is fully justified, as due to the working journalist under the heads of retrenchment compensation, gratuity, etc. Along with the

statement of claim the union has filed copies of various letters of the editor and manager to Sri Salivateeswaran and Sri Salivateeswaran's replies to

these.

5. In its written statement the management objects that there is no dispute between the Hindu in Bombay and its workmen (working journalists)

either as a body or a substantial section of them. It is entirely a personal dispute by Sri Salivateeswaran unsupported by other working journalists,

and therefore it is not an industrial dispute. It is also pointed out that on 1 March, 1956 when his services were terminated Sri Salivateeswaran was

not a member of the Bombay Union of Journalists and the union did not espouse his cause in the last proceeding under S. 17 of the Working

Journalists Act till after April 1958. Even now there is nothing to show that the union has passed any resolution to support his claim. The

management also denied that Sri Salivateeswaran was in service of the Hindu. It says that there is not relation of employer and employee between

the parties, and the reference is untenable. Sri Salivateeswaran, it says, was at liberty to supply news to other papers, and was a free-lance

journalist, the only restriction placed on his liberty to do so was that he had to obtain prior permission in case of his contributing to competing

papers. He was at liberty to gather news in any manner he chose, and was by no means under the control of the management of Hindu. He was

not paid salary but an honorarium. Apart from all this he has admitted in a number of letters that he was a free-lance journalist and not amenable to

the control and management of the Hindu. In 1936 he was himself publishing a newspaper called ""Dawn."" He had also the selling agency of Hindu

and Sport and Pastime. He had joined as a full-time assistant to Sri Walchand Hirachand for a while in 1941; and in 1952 he was engaged in

political activities, and was elected to the Legislative Assembly. The management then refers to a number of letters written by Sri Salivateeswaran

in which it has stated that he was not in the service of the Hindu and not a full-time correspondent. It is then explained that the word ""leave"" has

been used in some letters to denote his absence from Bombay, and not in the usual sense of the word. He had to intimate his departure from

Bombay because arrangement had to be made for supply of news in his absence. From 1 December, 1937 Sri Salivateeswaran was taken in the

service of the Hindu and placed in charge of the Bombay office but in 1939 he wanted again to become a free-lance journalist and resigned from

regulars service, and his contribution to the provident fund ceased. From that time onwards he was a free-lance journalist gathering news and

vending it to several newspapers, and getting remuneration. It is wrong to say that his services were terminated on 1 March, 1956. The

arrangement under which he was supplying news to the Hindu was terminated on that day. The real reason for this was that ever since his election

to the Legislative Assembly he was devoting most of his time to political activities, and neglecting his duties as a correspondent. The management

frequently complained to him about this, but he took no heed. When he intimated his desire to go to Europe, the management replied that if he did

so he will be relieved of his duties as a correspondent. In spite of this he went away to Zurich. It is not correct to say that Sri Srinivasan, the editor,

gave oral permission to Sri Salivateeswaran to proceed to Europe. Sri Salivateeswaran himself had stated previous to his going to Europe that

there was no question of his being given leave, as he was a free-lance correspondent. If this was so, then the question of his being entitled to leave

on medical grounds does not arise. The management also denies that Sri Salivateeswaran was responsible for obtaining the plots for erection of

kasturi Building in Bombay, or that his election to the Bombay Legislative Assembly was beneficial to Hindu. Even if it is conceded that Sri

Salivateeswaran was a working journalist, his conduct disentitled him to the benefits he seeks. In regard to his claim for compensation the

management says that Sri Salivateeswaran was not an employee of the Hindu and was not entitled to it. He has been publishing ""Salivati

Newsletter"" from 1957 onwards and has been employing himself in other ways and therefore cannot say that he should be still deemed to be in the

service of the Hindu. Regarding telephone bills, it is said that Sri Salivateeswaran was informed on his shifting to the premises previously occupied

by the Hindu in 1953 that his telephone bills thenceforward should be paid by him, as telephone facilities were available to him at the new premises

of the Hindu, and that since then he had been paying his telephone bills himself. He cannot now claim any telephone charges. About the travelling

allowance it is said that it was paid to him as a matter of grace and that he was not entitled to it as of right. Again the claim for three months' salary

on the basis of commuted period of medical leave and three months' salary on the basis of commuted period of privilege leave, the management

says that Sri Salivateeswaran was a free-lance on his own admission, and cannot claim anything in regard to the above items.

6. In regard to a sum of Rs. 8,100 which is claimed in respect of increment withheld, the management says that he is not entitled to any time-scale

and therefore his claim in this regard is untenable. It also denies that Sri Salivateeswaran was retrenched, and is therefore entitled to any

retrenchment compensation. His claim to gratuity is also contested on the ground that he is not a regular employee of the Hindu and was not in

continuous service. It is further stated that Kasturi & Sons (Private), Ltd., are proprietors of the Hindu, they are a private limited company which

came into existence in the year 1940 and they cannot be liable in respect of his claims for any period prior to their incorporation. Lastly it is prayed

that the legal objection raised by the company may be tried first as preliminary issues.

7. Sri Vimadalal for the union says that that the case may also be decided on merits so that in the event of this tribunal's decision on the preliminary

points being reversed by a higher authority a remand may not be necessary. It is said that at least regarding one preliminary objection, i.e., about

Sri Salivateeswaran not being in the employment of Hindu, lengthy evidence will have to be produced and much of it will be the same as would be

relied upon by the union in respect of merits, and therefore it will be better to decide the whole case. Sri Khambatta, however, on behalf of the

Hindu says that in regard to the merits he will have to summon evidence from various places outside the State and this will take a long time and will

entail a great deal of expenses. The legal objections, he says, go to the root of the case and should be decided first. Both the parties insist however

that I should express my opinion regarding all the objections even though owing to any one being decided against the union, it becomes

unnecessary to decide others. I heard the arguments regarding the preliminary objections. As one of the objections raised in my opinion succeeds,

I find it unnecessary to go into the merits of the case.

8. The first preliminary objection raised on behalf of the Hindu by Sri Khambatta is that Sri Salivateeswaran entered into their service by the

sanction of the management in Madras. He used to receive his honorarium and allowance from Madras. He had to obtain permission for

contributing to other papers, for going out of Bombay, for every little thing, from Madras. Whatever directions regarding his contribution to the

Hindu were given to him were received from Madras. There was, as a matter of fact, no establishment of Hindu in Bombay in the true sense of the

word. The dispute therefore is really between Sri Salivateeswaran and the Hindu at Madras and this tribunal has no jurisdiction. He relies on a

recent decision of the Supreme Court in Lipton Limited and Another Vs. Their Employees, . In this case with reference to Appeals Nos. 713 and

714 of 1957 the point raised by the employer was that the industrial tribunal at Delhi had no jurisdiction to make an award in respect of employees

of the Delhi office who were employed outside the State of Delhi. The Supreme Court held agreeing with the tribunal below that all the workmen

of the Delhi office since they received their salaries from the Delhi office and were controlled and transferred from there and since it was the Delhi

office which exercised full control over them, the Delhi tribunal had jurisdiction to decide the dispute. I do not find any force in this objection. The

Supreme Court in the above case has not said that the Delhi tribunal had exclusive jurisdiction. Merely because it is held that the tribunal of the

place where the employer resides has jurisdiction, it does not necessarily follow that the tribunal of the place where the employees work has no

jurisdiction. Industrial and labour laws aim at affording certain protection to the labour, and conferring certain benefits on them. As these laws are

for the benefit of the employees it appears to me necessary that they should be enforceable by the tribunals which exercise jurisdiction over the

territory in which the employees work. To hold otherwise would mean that an employer living in a foreign country, not subject to the labour laws of

this country, would be able to employ labour here on conditions not permitted by our laws. Let us take another example. Suppose there was an

enactment which conferred certain benefits on labour employed in Bombay State not enjoyed by workers in other States. Will the provisions of

this Act be not enforceable by the Bombay tribunal against an employer outside the State ? I think they would be enforceable. In the absence of

any express provisions to the contrary, in my opinion, in regard to laws which are made for the benefit of the employees it should be presumed that

the tribunal of the place in which the employees work will have jurisdiction to enforce them regardless of the fact where the employer resides. Sri

Khambatta says that the tribunal in such a case where the employer resides outside the State will have to give direction to the employer outside the

State, which it cannot do as such an employer is not subject to its jurisdiction. I do not agree. This may be true in case of a writ or order which is in

personam but in regard to labour laws the tribunal can say that if the labour is to be employed in the State within its jurisdiction, it must be

employed under the conditions laid down by the State laws. The employer may be outside the tribunal's jurisdiction but when he employs labour in

Bombay State he will have to comply with the laws of that State.

9. Sri Khambatta also contends that the dispute referred is between the Hindu Bombay and workmen (working journalists) employed under it.

There is no proper establishment of Hindu here as that word is defined in S. 2(d), Working Journalists Act, against which there can be a dispute,

or which can grant any of the demands made. The definition in S. 2(d) in my opinion is for the purposes of the proceeding under that Act and not

for a proceeding under the Industrial Disputes Act. It is not necessary that the branch here should be in a position to grant the relief sought. The

dispute against it can be raised as a representative of the employer outside the State. For the abovestated reasons this objection is overruled.

10. The second preliminary objection raised by Sri Khambatta is that Sri Salivateeswaran is not an employee of the Hindu and therefore he cannot

raise a dispute against it. In connexion with this, statements of four witnesses including Sri Salivateeswaran were recorded and 103 documents

were produced by the union. On behalf of the Hindu, five witnesses were examined and 73 documents produced. I shall refer to such portions of

this evidence as may be necessary while deciding the various objections raised. Only a small portion of this evidence relates to other objections; it

is mainly in regard to the issues raised in connexion with this objection that it was produced.

11. This objection rests on four separate grounds. The first ground is that he was a "free-lance" journalist "who contributed to many other papers

besides the Hindu. He was not in service of any one of them, at least not of the Hindu, and therefore is not its employee. In the report of the Press

Commission," Part I (1954), a free-lance journalist is defined as follows :-

They are not attached to any particular paper and are willing to sell their material to any newspaper which is prepared to buy it.

From this it is obvious Sri Khambatta says that only journalists, who sell their contribution to various papers not under the direct control of any, are

included in this category. He relies on various letters written by Sri Salivateeswaran in which he asserted that he was a free-lance journalist. He

draws my attention to Ex. C. 52 in which Sri Salivateeswaran makes an offer to the editor to take him up as a full-time correspondent and also Ex.

C. 53 in which he writes to the editor about the post of a special correspondentship offered to him by another paper and gives reason for rejecting

this offer, describing himself as a free-lance who collects more than was offered by that paper. This letter is dated 14 August, 1946. Again to Ex.

C. 54 in which Sri Salivateeswaran says that on account of his domestic circumstances he is being forced to suspend free-lancing and take some

whole-time job and requests the editor to take him up as a full-time correspondent. In Exs. C. 56 and 57 it is pointed out further that Sri

Salivateeswaran again requests that he should be taken as a full-timer. In the last paragraph on p. 8 of Ex. C. 57 Sri Salivateeswaran says that he

will seriously try to expand his free-lance activities. My attention was also drawn to Para. 3 of Ex. C. 59 in which Sri Salivateeswaran refers to his

faithful service to the Hindu for 22 years, and says in the first paragraph that he is willing to give up his free-lance activity. In Ex. C. 21 it is pointed

out by Sri Salivateeswaran that he has a great desire to go to Delhi for at least 6 to 12 months doing free-lance work there as he has been doing in

Bombay for a number of years. When confronted with these letters Sri Salivateeswaran in his statement at p. 36 says that what he means by free-

lance was that he wanted to do the same kind of work as he was doing in Bombay. In Ex. C. 19, a letter dated 8 February, 1942, Sri

Salivateeswaran writes to the editor saying that he was a free-lance correspondent not eligible to provident fund, privilege leave and other benefits

according to the service regulations and is therefore not obliged to obtain permission if he wants to go from Bombay to Delhi. When asked in

cross-examination to explain what he meant by that, he says that he wrote this letter in a moment of irritation, because the Madras office was

objecting to his leaving Bombay. Later he says that the statement there is not correct because it was written under provocation. Sri Khambatta also

points out that Sri Salivateeswaran admittedly contributed regularly to the other papers and the fact that he did so by the knowledge or what he

calls permission of the Hindu, should make no difference. Among the papers he was contributing to were the Daily Herald, Swadeshmitran, United

Press of America, and at one time he took up what may be considered as a full-time correspondentship of Hindustan Times. At p. 42 of his

statement in cross-examination he says that he was a representative of the Hindustan Times in Bombay for 2 1/2 years with full permission to send

news to Hindu. In view of all this, Sri Khambatta says, Sri Salivateeswaran cannot say that he was in the service of Hindu without break from

1939 till 1956. He has admitted having been given an office and staff by the Hindustan Times - see p. 43 of his statement. He says that he had an

assistant given to him by the Hindustan Times as he was the only representative of that paper in Bombay. He was also a regular correspondent of

the Anand Bazar Patrika. He admits that in spite of objection by the Hindu to his taking up the correspondentship of that paper, he did so. He says

that in 1939 the Hindu had given him permission in general terms to accept correspondentship of any paper which was not competing with it. Sri

Khambatta also invited my attention to the fact that Sri Salivateeswaran at one time attempted to start a paper of his own called ""Dawn."" Exhibit C.

28 is his letter to the editor of the Hindu in which he says that there can be no objection to his doing so, if he continues to contribute to the Hindu

as a correspondent. No correspondent who is not a free-lance, Sri Khambatta argues, can possibly act in the manner in which Sri Salivateeswaran

was doing all these years he professes to have been in the service of the Hindu. He had been contributing to many papers sometimes against the

will of the Hindu, as in the case of Anand Bazar Patrika, and sometimes starting or attempting to start a paper of his own like the Dawn, and

repeatedly describing himself as free-lance, and asserting his freedom on the basis of his status as such. Sri Vimadalal on the other hand says that a

free-lance in the true sense of the word is a person who sells news to any papers which is prepared to buy it. He is not subject to any control by

the management of any paper. No question of his obtaining permission for leaving a place, or his obtaining leave if he wants to stop contribution,

can arise. He cannot be directed by the management of any paper to carry out any particular mission, or to do work in any manner required by the

editor of that paper. He cannot be asked to undertake any particular job and cannot be described as representative of that paper. Bearing all this

in mind he says and looking at the correspondence between the parties which has been produced in this case by both the sides, which is

spread over a period of nearly 27 years, it becomes quite obvious that Sri Salivateeswaran was certainly not a free-lance. Sri Vimadalal referred to

several letters in which Sri Salivateeswaran was addressed by the management in Madras as the representative of Hindu. Of this in Ex. U. 2 he has

been addressed as editorial representative of the Hindu in Bombay, and is directed to cover certain function held at the inauguration of the Oil

Imports at Kandla Port. In Ex. U. 89, p. 4, again the editor of Hindu writing to Sri Bowman, Deputy Secretary to the Government of Bombay,

Revenue Department, refers to Sri Salivateeswaran as Hindu's representative in Bombay. Again in Ex. U. 9, U. 14/1, U. 23, U. 37/5, U. 67, U.

74, Sri Salivateeswaran is referred to as editorial representative or representative of the Hindu in Bombay. Sri Vimadalal says that this clearly

shows that Sri Salivateeswaran's position was not that of a free-lance correspondent. He also relies on many letters in which Sri Salivateeswaran

has been asked to do some kind of office, and supervision work, which is not the work entrusted to free-lance correspondent. In one of these Ex.

U. 4 in the bill of Sri Venkateshwaran Sri Salivateeswaran's counter-signature is required. In Ex. U. 7 Sri Salivateeswaran is asked to scrutinize

Sri Ramachandran's reports. In Ex. U. 35/2, dated 5 January, 1946, the management has asked Sri Salivateeswaran to arrange for shipment of

newsprint from Bombay to Madras. At p. 5 of the same exhibit is the reply of Sri Salivateeswaran to this letter. The Ex. U. 44 contains Sri

Salivateeswaran's views about reorganizing Bombay office which he gives in reply to Hindu's letter demanding his views on that matter. Again in

Ex. U. 50/1 there is a reference to Sri Salivateeswaran's being relieved of the charge of the business side of the office, and it also mentioned in this

letter that he was in charge of the news side. The editor says that he desires to expand the news side under the charge of Sri Salivateeswaran.

Similarly in Ex. U. 51 Sri Salivateeswaran's views regarding confirmation of Sri Ramachandran are demanded. Exhibit U. 64 shows that Sri

Salivateeswaran was consulted by the editor while appointing Sri Tiwari. Sri Vimadalal says that the duties which were entrusted to Sri

Salivateeswaran from time to time as are evident from these letters are not compatible with his position as free-lance. The duties can only be given

to a person who is in the employment of the paper. There are other series of letters relied upon by Sri Vimadalal in which Sri Salivateeswaran has

been spoken of as being in the service of the Hindu, or which denote that he was in its service. Among these are Ex. U. 18 which is a letter which

speaks of Sri Salivateeswaran's services being lent to Sri Walchand Hirachand. If he was a free-lance journalist, it is argued, the question of his

services being lent to any other paper or person would not possibly arise. In Ex. U. 26 the assistant editor writing to Sri Salivateeswaran writes

regarding his rejoining the service and speaks to taking permission before having headquarters. In Ex. U. 37/3 the management wrote to Sri

Salivateeswaran saying that the editor is agreeable to his request to depute him to Delhi to help Sri Shiva Rao. There can be no question, it is

contended of his deputation, if he was not in service. Exhibit U. 88/1 speaks of the service of Sri Salivateeswaran being terminated and at p. 2 it is

stated that he has ceased to be the Hindu's correspondent. If he was not in service, it is contended, how was it necessary to say his services were

terminated. If he was a free-lance and his articles or contributions are not required, he will merely be intimated that in future his contribution will not

be accepted. Sri Vimadalal then refers to some letters in which instructions were given to Sri Salivateeswaran from Madras about various jobs to

be done. In Ex. U. 49 Sri Salivateeswaran has been asked to select a competent person for being appointed to cover sports news. Instructions

regarding various matters have been given to Sri Salivateeswaran at p. 10 of this exhibit, e.g., he has been asked to tell one Fernandez who was

appointed as sports correspondent to cover not only the week-end sport but the entire week's sport and to ask another correspondent to write

about film topics. Similarly the letter at p. 12 gives instructions about furnishing pictures of Indian interest for publication in Sport and Pastime and

to issue various directions to the agencies from which pictures had been procured. It is unnecessary to refer to other letters which form part of this

exhibit; they contain instructions of similar nature. Sri Vimadalal also refers to some letters like Ex. U. 32 written to Collector of Bombay in which

the editor refers to Sri Salivateeswaran as ""our Sri Salivati,"" to Ex. U 33 addressed to the Secretary to Government of Bombay, Revenue

Department, in which the editor refers to him as ""our Mr. Salivateeswaran"" in Ex. U 58 and to Ex. U. 21/5 which shows that Sri Salivateeswaran

was consulted about starting Hindu from Bombay at the time when Japanese invasion was feared in Madras, and contends that they all point to the

fact that he was not merely a free-lance correspondent but a regular employee. At p. 6 of the same exhibit Sri Salivateeswaran is instructed to

approach Sri Jinnah about some news, instructions of this nature not given to a free-lance correspondent. In addition to these, Sri Vimadalal says

that in Ex. U. 56(3) the management has sent the auditor's report for information. If he was merely an outsider, the auditor's report would not

have been sent to him. From p. 4 of the same exhibit it appears that the cheque book was kept in charge of Sri Salivateeswaran which also

indicates that he was an employee of the Hindu. My attention was also drawn to Ex. U. 55 which is a statement showing deduction of tax from the

remuneration paid to Sri Salivateeswaran. Sri Vimadalal contends that if a person is paid merely a fee, or remuneration for each article, no

deduction can be made at the source. It is only in case of regular employees who get a fixed salary that such deductions are made. The next

document on which emphasis is laid is Ex. U. 44. This is a letter addressed by Sri Salivateeswaran to the editor, in which he gives his views

regarding the proposal to reorganize the Bombay office, and expresses his readiness to take up the management work in addition to his news

work. It also shows that it was proposed by the Hindu that the reorganization of the entire office would be entrusted to Sri Salivateeswaran, and in

that connexion he was required to express his opinion on various matters of detail. It is said that all this is not compatible with Sri

Salivateeswaran's being merely a free-lance correspondent. Emphasis is also laid on the fact that a fixed remuneration and various allowances

were paid to Sri Salivateeswaran as it appears from Ex. U. 55 and other various documents. It is said that the usual mode of payment to a free-

lance correspondent is per column or article and not a fixed salary with allowances. It is also said that admittedly Sri Salivateeswaran was given a

room in the office of the Hindu. That the task of obtaining a site for the building, negotiating with the Government and to supervising the

construction, passing of estimates and issuing of cheques to the contractor were all entrusted to Sri Salivateeswaran, as appears from the

correspondence. All this too it is said is not compatible with his being merely a free-lance. In regard to Sri Salivateeswaran's admissions about his

being a free-lance in some of the letters filed by the opponent, Sri Vimadalal says that the explanation given by Sri Salivateeswaran that he wrote

them under provocation is sufficient. He says that it is for the tribunal to determine by the evidence on record whether judging by the nature of

duties and relations of the parties, etc. Sri Salivateeswaran was an employee or a free-lance. Merely because Sri Salivateeswaran wrongly

described himself as free-lance the tribunal was not bound to hold that he was one.

12. Sri Khambatta on behalf of Hindu says that Sri Salivateeswaran during 27 years of his connexion with the Hindu contributed to the provident

fund and applied on the forms used by the employees for leave, etc., was subject to other conditions that govern regular employees only for 2

years, i.e., 1937 to 1939. He drew those two years' contribution of his to the provident fund 13 years later in 1952 without any protest. If he

considered himself a regular employee of the Hindu, he would have protested against the Hindu's act in stopping his contribution to provident fund.

On behalf of the union it is said that Sri Salivateeswaran has been protesting against this from the beginning and he has stated so on oath in his

deposition in the Court. Sri Vimadalal contends that apart from this merely because he ceased to be a member of the provident fund by an

arbitrary act of the Hindu, he cannot cease to be an employee for the purpose of the Industrial Disputes Act, if other conditions are fulfilled which

bring him within the definition of a workman.

13. I must say at the outset that merely because Sri Salivateeswaran has repeatedly said in his letters that he was a free lance is not sufficient for

holding it as proved that he was a free lance. If on account of not properly grasping the meaning of the term or for any particular motive a person

assumes any designation, it cannot be considered as conclusive. It is the duty of the tribunal to find out what he really was. There can be no

question here of estoppel, because there was no representation made in these letters about facts not within the knowledge of the opposite party.

There can be no estoppel when both the parties are equally acquainted with the facts - see *Mohori Bibee v. Dharam Dass* 301 A. 114 (P.C.).

Even if the statements in these letters are taken as admissions against the parties' own interest, such admissions about one's own status cannot be

conclusive under S. 31 of the Evidence Act - see *Thakore Saheb v. Khachar* 63 I.A. 248 (P.C.).

14. Before examining the evidence we must first clearly understand what the term "free lance" means and also what is meant by a "working

journalist" as the term is defined in S. 2(f), Working Journalists Act. The meaning of the term "free lance" is given in the Chamber's English

Dictionary as

one of certain roving companies of knights and men-at-arms, who after the Crusades wandered about Europe selling their services to any lord

who was willing to purchase their aid.

This means that they were not servants of anyone, and were willing to offer their services to any person whose terms satisfied them. This term has

been introduced in journalism to describe journalists who sell news to any editor who is prepared to buy it. In the Report of the Press

Commission Part I (1954) at Para. 5, p. 215, free-lance journalists are defined and described as follows as :-

They are not attached to any particular paper and are willing to sell their material to any newspaper which is prepared to buy it.

Thus the free-lance journalists are those who are not attached permanently to any one paper, and are at complete liberty to sell their news or

contribution to any paper they like. I am however of opinion that merely because a journalist contributes to several papers and consequently is only

a part-time employee of any one of them, it does not follow that he is a free-lance, or that he cannot be an employee of any one of the papers to

which he contributes. I am fully supported in this view by the description of part-time journalists given in the Report of the Press Commission at

Para. 555, p. 213 :-

There is another class of correspondents who devote their whole time to journalism but serve not merely one paper but several papers under

different proprietors.

The Commission recommends that the contract of employment even on a part-time basis should include a provision for benefits like provident fund

and gratuity, etc., and evidently intends that they should be placed in some respects on the same footing as the full time employees. Carefully

considering the evidence placed before me which consists mostly of a large number of letters written by the parties to each other, I cannot hold that

Sri Salivateeswaran was merely a free-lance journalist. Some of these letters show that he was considered during this time a representative of the

Hindu in Bombay - see Exs. U. 14, dated 19 August, 1939, U. 2, dated 1 April, 1955, Sri Salivateeswaran is addressed as editorial

representative and U. 9, dated 27 April, 1955, also U. 37, pp. 5 and 10 dated 10 July, 1946 and 23 December, 1946 respectively. A free-lance

journalist cannot be a representative of any paper. Another thing which is not compatible with his being a free-lance is the fact that instructions

were issued from time to time by the management for Sri Salivateeswaran, not only to cover certain news at different places, but to do various

other jobs which is not a part of the duties of a free-lance journalist, among these are Ex. U. 7 in which he is asked to scrutinize Sri

Ramachandran's report, Ex. U. 21(6) in which he was instructed to cover particular news and Ex. U. 49(17) about Sri Ramachandran's report

Ex. U. 21(6) in which also he is informed of the appointment of one Fernandez. This shows that what has been said in the written statement, Para.

8(g) & (h), that he was at liberty to gather news in any manner he liked and not subject to the control of the Hindu, is not correct. It is

inconceivable that a free-lance journalist who merely sells his news should be consulted in these matters. There are also many letters which show

that he was treated as if he was in service and important thing among these is Ex. U. 18 which speaks of his services being lent to Sri Walchand

Hirachand. If he was not in service of the Hindu and merely a contributor, he would have simply informed that he would not be in Bombay for the

period in question so that the ""Hindu"" might make some other arrangement, and there could have been no question of his services being lent, to

anybody. Another important letter in this connexion is Ex. U. 50 in which it is stated that the news side which is under his charge, is to be

expanded. Being in charge of the news side of a paper indicates to my mind the relationship of an employer and employee. Exhibit U. 44 is a letter

by Sri Salivateeswaran to the editor referring to his being consulted about reorganization of the Bombay office, which also shows that he was an

employee of the Hindu. Exhibits U. 35(2) and (5) show that a special job of sending newsprint to Madras was entrusted to him. Exhibit U. 20

speaks of his joining duty at Bombay. In Ex. U. 75(3) and (4) no doubt the assistant manager writes to Sri Salivateeswaran to say that he is not a

full-time or a regular employee but in Ex. U. 88(1) and (2) which are communications to him it is stated that his services are terminated. This shows

that he was considered to be an employee of the Hindu at that time. If he was merely a free-lance correspondent, it would be said that in future his

contribution would not be accepted or something of that kind. I have also referred to the correspondence of his being in charge of the construction

of the building which fact is not denied. In the letter written to various authorities in Bombay in that connexion the editor writes about him as ""our

Mr. Salivateeswaran"" or ""our representative."" Sri Khambatta says that these jobs entrusted to him had nothing to do with journalism or cannot be

taken into account for the purpose of S. 2(f) or 3, Working Journalists Act, by stressing this fact. I am here merely trying to show that whatever he

may be, Sri Salivateeswaran was not a free-lance. There are besides this other circumstances which also point to the fact that he was not merely a

free-lance, for example, he was paid not per article or by its length, importance, etc., but a regular fixed remuneration with various allowances as

shown by the correspondence referred to above. He was also given a room in the office which is usually not given to a free-lance who is not an

employee.

15. It is no doubt true that Sri Salivateeswaran was only a member of the provident fund from 1937 to 1939 and it was only during this period that

he had applied for leave on the forms for permanent staff. But I think this cannot be considered as a conclusive proof of Sri Salivateeswaran not

being an employee of the Hindu when his services were dispensed with. A tribunal must see whether by the facts established a person comes

within the definition of a "working journalist" or a "workman" or not. It cannot consider the classification made by the employer or any description

or designation given by him as binding and final. If on facts established a person falls within the definition of an employee, I cannot refuse to treat

him as such, because his employer does not call him one. It is not necessary for falling under the definition of working journalists or for being

considered as an employee of the Hindu, or workman under the Industrial Disputes Act that a person should be a member of the provident fund or

be made subject to certain service rules. An employer might have made classification for his own purpose with which we are not concerned.

Notwithstanding the fact that Sri Salivateeswaran was not on the permanent staff list from 1939 onwards, we must independently on facts

established by documentary and oral evidence judge what the nature of Sri Salivateeswaran's relation was with the Hindu when his services were

terminated in 1956. It must be conceded that it is established beyond doubt that he was not a whole-time employee of the Hindu. A large number

of letters to which reference has already been made show that he was contributing freely to other papers by permission of the Hindu and on one

occasion without the consent of "Hindu." It is also proved that of one time Sri Salivateeswaran attempted to start a paper of his own. These facts

denote that he was not a whole-time but a part-time employee of the Hindu. In Ex. 62 Sri Salivateeswaran speaks of himself as a part-time worker

and correspondent which leads to the same conclusion. For the reasons stated above I hold that Sri Salivateeswaran was not a free lance having

no connexion with the Hindu but its part-time employee.

16. The second ground on which the objection of Sri Khambatta rests is that if the various provisions of the Working Journalists Act are closely

examined, it becomes clear that it was not meant to apply to employees who have no fixed hours of work or fixed salary and allowances. Thus,

even if Sri Salivateeswaran is held to be a part-time employee, the Act cannot apply to him. Sections 5 and 6, Sri Khambatta says, cannot apply to

a part-time employee. Section 5 also relates to gratuity which cannot apply to part-time journalists. It will be absurd to say that he will be getting

these benefits from each of the several papers to which he contributes. Section 6 lays down the number of hours and period of rest. In case of a

part-time correspondent there can be no question of fixed hours of work or rest for one day in a week. Correspondents like these do not have to

sit in the office and work for any fixed number of hours. They have to run about and collect news, and then write out the items or articles. The only

thing that is required to them is that they should make their contribution in time when the news is still fresh and worth publishing. It is therefore quite

evident that this Act is not meant for journalists like Sri Salivateeswaran. He also points out that S. 9 regarding fixation of wages and S. 14 about

Industrial Employment (Standing Orders) Act, S. 15 regarding provident fund and in fact all the important provisions of it, are incapable of

application to a journalist like Sri Salivateeswaran. It is undoubtedly true that there can be no fixed hours of work for correspondents and these

provisions do not apply to them but from this we cannot conclude that the whole Act does not apply to them. Merely because the main provisions

of the Act deal only with one class of workmen it cannot be said that the Act was not intended to apply to others. I am also not prepared to

concede that benefits like gratuity or provident fund are incapable of being awarded or granted to part-time workers. This can be done if the

remuneration is fixed. The definition of working journalist under the Working Journalists Act in S. 2(f) is as follows :-

"Working journalist" means a person whose principal avocation is that of a journalist and who is employed as such in, or in relation to, any

newspaper establishment and includes an editor, a leader writer, news editor, sub-editor, feature writer, copy tester, reporter, correspondent,

cartoonist, news photographer and proofreader, but does not include any such person who -

"(i) is employed mainly in a managerial or administrative capacity, or

"(ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested

in him, functions mainly of a managerial nature".

Feature-writers, cartoonists, news photographers as well as correspondents, can be part-time workers. When the definition is couched in such

wide terms that it clearly includes all those who cannot have fixed hours of work, its application cannot be narrowed down to such of those who

work for fixed hours because most of the provisions of the Act can apply to those who have fixed hours of work. Sri Vimadalal invited my

attention to the Debates in the Rajya Sabha Vol. XI, No. 8, dated 1 December, 1955, Official Report at Col. 1160, replying to the following

question :-

Will the Hon. Minister kindly make one point clear ? Does the definition of "working journalist" apply only to people who are wholtime workers

in one establishment or also to people who are part-time workers in a number of establishments, for instance, press correspondents ?

by Sri H. N. Kunzru, Dr. B. V. Keshkar, the Minister, said as follows :-

As far as press correspondents are concerned, it will apply to correspondents who are working for a number of papers. I am talking of mofussil

correspondents. And how it will apply is not something which I can answer at this moment, but if his principal avocation is that of a journalist, it is

bound to apply to him and he is under an obligation to all the several papers concerned. How he will be able to get his dues from the various

papers is something that will have to be worked out.

Sri Khambatta objects to this and says that Debates in Parliament cannot be relied upon for gathering the intention of the legislature. Sri Vimadalal

in answer relies on 1959 S.C.R. 12, Express Newspapers (Private), Ltd., and another v. Union of India and others, in which the Supreme Court

has relied on the debates in Rajya Sabha. Sri Khambatta says that in this case reference was made to Rajya Sabha debates to trace the history of

the legislation and not to interpret any provisions of the Act. It is unnecessary to decide the point as I have independently come to the conclusion

that this definition covers part-time employees. On this ground also Sri Khambatta's objection cannot succeed.

17. The third ground on which Sri Khambatta bases his objection is that in addition to being a working journalist an employee must satisfy the

definition of workman, under the Industrial Disputes Act, given in S. 2(s) in order that he may get the benefit of S. 3 of the Working Journalists

Act. As Sri Salivateeswaran's honorarium was more than Rs. 500 per month and he, according to his own statement, was entrusted with

supervisory and managerial duties, he could not come within the definition of a workman under the Industrial Disputes Act. He relies on the words

apply to or in relation to working journalists as they apply to or in relation to a workman"" in S. 3 of the Working Journalists Act and contends that

from these words it is clear that the Act will be applicable to working journalists in the same manner and under the same conditions as to other

employees and if in a particular case though a person falls in the definition of working journalist under the Working Journalists Act but fails to come

in the definition of ""workman"" in the S. 2(s), Industrial Disputes Act, the Act will not be applicable to him. Sri Khambatta points out that if this view

is not taken, the result will be that the Industrial Disputes Act will apply to the editors and correspondents getting several thousand rupees a month.

I think that the very words of S. 3 relied upon by Sri Khambatta go against his contention. They plainly say that the Industrial Disputes Act shall

apply to working journalists as to workmen under that Act which means that it would apply to them as to persons to whom the definition of

workman under the Industrial Disputes Act applies, i.e., without their having to fulfil any further conditions. Moreover, the definition of the "working

journalist" in Working Journalists Act and the definition of the workman in Industrial Disputes Act are in some respects inconsistent with each other

so that both cannot apply to a person at the same time. A correspondent, for example, in no instance is or can be employed to do any work which

can be called manual, supervisory, technical or clerical. This clearly indicates that the legislature never intended that in order that Industrial Disputes

Act may apply to a person he should satisfy the requirements of S. 2(s) of that Act necessary for being a workman in addition to that of S. 2(f) of

the Working Journalists Act. I am not also prepared to accept the interpretation suggested by Sri Khambatta on the ground that rejecting it would

result in the inclusion of working journalists getting more than Rs. 500 per month. When the wording of the section is plain, the tribunal should give

effect to it and not change it to make it fit with its own conception of what in its opinion is reasonable and proper. On this ground also the objection

cannot be sustained.

18. The last point raised by Sri Khambatta is that even under the Working Journalists Act the definition given in S. 2(f), exceptions (1) and (2),

which are as follows :-

(i) is employed mainly in a managerial or administrative capacity, or

(ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested

in him, functions mainly of a managerial nature.

Sri Salivateeswaran cannot claim any relief because by his own admission he was exercising supervision over other workers and performing

managerial duties. He relies on Sri Salivateeswaran's statement and some letters which he produced in support thereof that while recruiting some

workers he was consulted and that the news side was under his charge and that some of the contributions of other journalists had to be approved

of by him and some bills countersigned. I do not agree. All that appears from these letters and the statement of Sri Salivateeswaran is, that

occasionally he was asked to do these duties. There is nothing to show that he had any regular duties of supervision or of management. In order to

fall under the exceptions in (i) and (ii) of S. 2(f) a person must be employed in supervisory or managerial capacity. Sri Salivateeswaran was not

employed as such. I cannot allow the objection therefore on this ground also.

19. Finally I think that considering the whole evidence it is established that Sri Salivateeswaran was only a part-time correspondent, to whom

reference is made in Para. 555 of the Report of Press Commission. It appears from several letters to which I have already referred that the

management exercised some control over him. He was many times instructed about news he was to cover and report. The fact that he was not

classed as a regular staff employee and not treated as such for the purpose of conferring benefits like provident fund, etc., and was not subject to

certain service rules as other regular employees cannot take him out of the definition of working journalists. In the result I disallow this objection.

20. The last preliminary objection is that this is not an industrial dispute. For being an industrial dispute it is necessary that other workers should

also support Sri Salivateeswaran's case, and in this case both the working journalists who are employees of the Hindu and who are members of

the union have filed affidavits and given their statements to say that they do not wish to support his claim. The dispute therefore becomes an

individual dispute, which this tribunal has no jurisdiction to entertain. In support of this Sri Khambatta relies on Budge Budge Municipality v. P. R.

Mukherjee 1953 I L.L.J. 195 , in which the Supreme Court observed that a single employee's case can only develop into an industrial dispute

when it is taken up by the trade union of which he is a member, and there is a concerted demand by the employees (see p. 199, Col. 1), and also a

decision of the Patna High Court in South Bihar Sugar Mills Ltd. Vs. The State of Bihar and Others, in which it held that the industrial dispute must

be construed to mean not a dispute between an individual workman and the management, but a dispute which though it may originate in an action

with regard to an individual workman, has developed into a dispute in which the majority of the workmen in the establishment are interested. The

third case relied on by Sri Khambatta is Sri Rama Vilas Service, Ltd. v. State of Madras 1956 I L.L.J. 498 , in which the Madras High Court held

that according to the definition of industrial dispute in s. 2(k) an individual dispute between a workman who is employed does not fall. The next

case cited by Sri Khambatta is Central Provinces Transport Services Ltd. Vs. Raghunath Gopal Patwardhan, , a Supreme Court decision in which

it was held that notwithstanding the language of S. 2(k) which is wide enough to cover a dispute between an employer and a single employee, the

scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only

disputes which involve the rights of workmen as a class, and that a dispute touching the individual rights of a workman was not intended to be the

object of industrial adjudication. Another Supreme Court decision relied upon by him is *The Newspapers Ltd. Vs. The State Industrial Tribunal*,

U.P., and others. In this case all the previous decisions were reviewed and the different points of view taken in such decisions discussed and

finally the Supreme Court expressed its opinion that the word "workmen" instead of workman which occurs in S. 2(k) indicates that the Act is only

applicable to collective disputes. It was pointed out that this view was in consonance with the idea underlying modern industrial legislation and that

the interpretation given to corresponding phrase "trade dispute" in English law and "industrial dispute" in Australian law accords with this view. In

support of his contention Sri Khambatta has also relied on a recent case decided by the Supreme Court, *Workmen of Dimakuchi Tea Estate Vs.*

The Management of Dimakuchi Tea Estate, in which it was observed that the expression "any person" occurring in the third part of the definition

clause in S. 2(k) could not mean anybody or everybody in this wide world but persons in respect of whom employer-employee relation exists,

which limits the scope of application of this definition not only to the dispute between more than one worker and the employer, or between a set of

workers and their employer but in case of dispute between an employer and employee between him and his own workers only. Reference was

also made in support of this contention to a recent decision of the Kerala High Court in *Chittadi Estate Vs. Industrial Tribunal and Others*, . The

dispute in that case was referred to the tribunal of a single person supported by an industry wide union. There was no evidence to show that the

cause of that workman was espoused by other workmen in the same establishment to which he belonged. The High Court held that the dispute

referred to the tribunal was a dispute between the petitioner company and a workman of the tea estate and as the workmen of that particular estate

did not espouse the cause of the employee, it was not an industrial dispute, and the tribunal had no jurisdiction to decide the reference. Sri

Vimadalal in answer to this contends on behalf of the union that the other working journalists in the employment of the Hindu at Bombay, viz., Sri

Venkateshwaran and Sri Tiwari, stated that they do not espouse the cause of Sri Salivateeswaran under pressure of their employer. He points out

that the letters which these persons addressed in this regard Exs. C. 1 and C. 3 to the manager, Hindu, were couched in identical terms and in fact

are same word to word. The receipts of registration Nos. 247 and 248 (Exs. U. 86 and 87) of copies of the said letter sent to Sri Salivateeswaran,

show that they were posted at the same time. In spite of this, Sri Venkateshwaran says that he had discussed the matter with Sri Tiwari on one or

two occasions in April, he drafted the letter and showed to Sri Tiwari and took it back, and Sri Tiwari wrote his letter independently. Sri Vimadalal

says it is impossible because Sri Tiwari could not have remembered the wording of this letter so closely as to write exactly similar letter

independently, which shows that this witness is suppressing the truth, and was acting under the pressure of the management. The statement of Sri

Tiwari in this connexion is not consistent with the statement of Sri Venkateshwaran. He says that Sri Venkateshwaran wrote the letter and kept it

ready in the office. He read and signed it. This witness denies also of the copies of the letters having been posted simultaneously to Sri

Salivateeswaran. He says he did not know if Sri Venkateshwaran sent a copy of this letter to Sri Salivateeswaran, and says he posted it

independently. This is obviously not true, because the consecutive registration numbers strongly indicate that they were posted at the same time. He

also says that these witnesses have stated that they did not know about Sri Salivateeswaran's dispute at all when they wrote this letter. This also he

says is not only unlikely but almost impossible. Such deliberate falsehoods made the affidavits and the statements of these witnesses worthless. I

cannot agree. When any party sets up a defence of coercion, or undue influence, the burden lies heavily on him to prove these. In my opinion

simply because these witnesses have suppressed certain facts, or because the truth of their statements in regard to certain matters is doubted, I will

not be right to conclude that they were acting under the pressure of the management or that refusal to support Sri Salivateeswaran's cause was not

genuine. It is possible that they were inspired by the motive of self-interest, and were afraid to sponsor Sri Salivateeswaran, lest they should incur

the displeasure of their employer, but this is no justification for discarding their evidence altogether. We are not concerned with what motive they

are not supporting Sri Salivateeswaran's cause. If in order to avoid doubt being cast on the truth of their statement, they conceal the fact of their

acting in concert or the fact that they knew of this dispute earlier than they admitted, it cannot be assumed that they really wanted to support Sri

Salivateeswaran but were not doing so under coercion of the management of the Hindu. If the refusal of support is taken to be genuine, the delay in

communicating this is immaterial. The Madras High Court in Management of the ""Hindu"", Madras (Kasturi and Sons Ltd.) Vs. The Working

Journalists of the ""Hindu"", Madras and Another, , held that even if the other workers who support the case in the beginning withdraw their support

later, the dispute loses the character of an industrial dispute.

21. It may be mentioned here that before commencing his reply Sri Vimadalal requested that an officer of the Indian Federation of Working

Journalists should be permitted to appear on behalf of Sri Salivateeswaran, under S. 36(1)(c) of the Industrial Disputes Act. Sri Khambatta

objected to this on the ground that two representatives under S. 36 cannot be allowed to appear at the same time, and also on the ground that the

federation is not appearing in a representative capacity but wishes to appear as an interested party because they support Sri Salivateeswaran's

cause, this cannot be allowed under S. 36. In my opinion, if S. 36(1)(c) permits an officer of a federation of trade unions, to which the union is

affiliated, to appear on behalf of the person whom the union represents, there can be no objection to an officer of the federation appearing. Sri

Vimadalal says that the officer does not want to appear personally but would instruct him through his junior Sri Ramaswami and that he (Sri

Vimadalal) only wants permission that he should be allowed to represent both the Bombay Union of the Working Journalists and the federation. I

think in such a case the objection that two persons cannot be allowed to appear does not arise. In regard to the other objection about the motive

for appearing, I think that it is immaterial for the purposes of S. 36 as to whether the federation is supporting the case of Sri Salivateeswaran or

not. I therefore give permission to Sri Vimadalal to appear both for the union and the federation. If the officer of the federation is entitled to appear,

he can certainly appear through his counsel.

22. Sri Vimadalal's next contention is that even if it is granted that other working journalists in Bombay who are employees of the Hindu, namely,

Sri Venkateswaran and Sri Tiwari refuse to support Sri Salivateeswaran's cause, the dispute would still be an industrial dispute and not an

individual one, because the other members of the Bombay Union of Journalists were supporting Sri Salivateeswaran's case. The fact they are not

employees of the Hindu but of other units in the industry can make no difference. The case of Kerala High Court 1959 II L.L.J. 284 cited by Sri

Khambatta is distinguishable, says Sri Vimadalal, because that case proceeded on the particular wording of the reference and the High Court has

there refused to give any opinion regarding this question. Sri Vimadalal relied further on certain observations in the Supreme Court decision in The

Newspapers Ltd. Vs. The State Industrial Tribunal, U.P., . He points out that at p. 2 while stating the facts of the case, the Supreme Court has

taken care to say that the dispute before it was unsupported not only by the workers of a newspaper but also workers of similar or like trade,

which clearly indicates that their lordships were of the opinion that if such workers of the like industry or trade had supported the case, the position

would have been different.

22A. I think that there can be no doubt now after the pronouncements of the Supreme Court in C.P.T.S., Ltd. v. R. G. Patwardhan 1957 II L.L.J.

27 and The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P., that a dispute raised by an individual workman unsupported by others is not

an industrial dispute. I have mentioned what has been decided in these cases above.

23. In my opinion, it is further necessary in order that an individual dispute should be converted into an industrial dispute that it should be supported

by the employees of the same employer. Support by any other employee although in the same industry as the employee raising the dispute is not

enough. The Labour Appellate Tribunal in Janata Bus Transport, Tellicherry v. its workmen 1956 I L.L.J. 470, had held that the support of the

union of which except the workers raising the dispute no other employee of that company was a member would not convert the dispute into an

industrial dispute. In that case two employees of the Tellicherry Janata Bus Transport were dismissed. None of the remaining thirteen employees

were members of the union which was supporting the dismissed person's claim for reinstatement. This support was considered not sufficient for

making it a collective dispute. This was followed in India Traders' Corporation v. Kiranchandra Majumdar 1956 II L.L.J. 209. In this case the

worker raising the dispute, one Sri Majumdar, was a member of a trade union which was supporting his case. The other employees of the

company were not members of that union. It was held that the support of other members of the union who were not employees of the concern

against whom Majumdar had raised the dispute could not convert the dispute into an industrial dispute. I think, taking into consideration the whole

scheme, the object and the subject-matter of the Industrial Disputes Act it is quite clear, that it cannot apply to a dispute between any concern or

undertaking and workmen who are not its employees. "Industrial dispute" is defined in S. 2(k) of the Industrial Disputes Act as follows :-

"Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between

workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour,

of any person.

The words "any person" should be interpreted not in the wide sense which would mean that the Act would apply to the terms of employment in any

industry or any workman. It is obvious that this was never intended, but they are used in the narrower sense so that workmen can only raise a

dispute against their own employers who can afford them redress. The High Court of Bombay in N. K. Sen and others v. Labour Appellate

Tribunal 1953 I L.L.J. 6, has held that if the words "any person" at the end of S. 2(k) were to be read as an expression without any limitation of

qualification it would be open for the workmen not only to raise a dispute with regard to the terms of employment of persons employed in the same

industry as himself, but with regard to the terms of employment in corresponding, or similar industries, and also with regard to the terms of

employment of any workman, or any labour anywhere in the world. It is necessary therefore to give a limited meaning to the words and they

should be construed in conjunction with their context. The employer against whom such workers raise a dispute should be in a position to afford

them the remedy which they seek. In other words they should be his employees and not somebody else's. This decision was cited with approval

by the Supreme Court in Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, . In that case the Supreme Court

was considering whether a dispute in relation to a person who is not a workman within the meaning of the Act falls within the scope of the definition

of S. 2(k) or not. A medical officer, Dr. Bannerjee, who did not fall within the definition of a workman was dismissed, by the estate. His case was

espoused by the workmen of the estate, and the Supreme Court, holding that this was not an industrial dispute, incidentally considered the question

as to whether the dispute between workmen who are not employees of the concern and that concern, should be considered an industrial dispute.

Their lordships' observations in this regard may be merely obiter dicta but the obiter dicta of the Supreme Court is binding on all courts and

tribunals in the land. At p. 506 their lordships observed as follows :

It seems fairly obvious to us that if the expression "any person" is given its ordinary meaning, then the definition clause will be so wide as to

become inconsistent not merely with the objects and other provisions of the Act, but also with the other parts of that very clause. Let us see how

the definition clause works if the expression "any person" occurring therein is given its ordinary meaning. The workmen may then raise a dispute

about a person with whom they have no possible community of interest; they may raise a dispute about the employment of a person in another

industry, or a different establishment, a dispute in which their own employer is not in a position to give any relief in the matter of employment or

non-employment or the terms of employment or conditions of labour of such a person.

Then at p. 508, Col. 1, occurs the following passage :-

It is obvious that the dispute between the employers and employers, employers and workmen, or between workmen and workmen, must be a

real dispute capable of settlement or adjudication by directing one of the parties to the dispute to give necessary relief to the other. It is also

obvious that the parties to the dispute must be directly or substantially interested therein so that if workmen raise a dispute, it must relate to the

establishment or part of establishment in which they are employed.

At another place, p. 504 their lordships remarked :-

A little careful consideration will show however that the expression "any person" occurring in the third part of the definition clause cannot mean

anybody and everybody in this wide world. First of all the subject-matter of the dispute must relate to

(i) employment or non-employment or

(ii) terms of employment or conditions of labour of any person;

these necessarily import a limitation in the sense that a person in respect of whom the employer-employee relation or can never possibly exist,

cannot be the subject-matter of a dispute between employers and workmen. Secondly, the definition clause must be read in the context of the

subject-matter and scheme of the Act and consistently with the objects and other provisions of the Act.

It is necessary that the employer against whom the dispute is raised should be able to give the relief sought.

24. These observations make it abundantly clear that a worker cannot raise a dispute against a company which is not his employer. There can be

no doubt, therefore, that the support of workers, who are not employees of the Hindu in this case, will not enable Sri Salivateeswaran to convert

his dispute into an industrial dispute. All the other members of the Bombay Union of Journalists except Sri Salivateeswaran and Sri Tiwari and Sri

Venkateswaran are employees of other papers. The union's support therefore is of no avail to Sri Salivateeswaran.

25. Sri Vimadalal contends that it is not true to say that it is only the employees of other papers who are supporting this dispute. He has adduced

proof to show that the Indian Federation of Working Journalists is supporting Sri Salivateeswaran's case. Other employees of the Hindu, for

example those in Madras, are members of the Madras Union of Journalists which is affiliated to the federation. I am unable to agree with this

contention. First of all the reference is in terms which leaves no room for this stand being taken up. It is as follows :-

Whereas the Government of Bombay has considered the report submitted by the conciliation officer under Sub-section (4) of S. 12 of the

Industrial Disputes Act, 1947 (XIV of 1947), in respect of the dispute between the Hindu, Bombay, and the workmen (working journalists)

employed under it over the demands mentioned in the schedule appended hereto;

And whereas the Government of Bombay after considering the aforesaid report is satisfied that there is a case for reference of the dispute to a

tribunal;

Now, therefore, in exercise of the powers conferred by Sub-section (5) of S. 12 of the Industrial Disputes Act, 1947 (XIV of 1947), read with S.

3 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 (XIV of 1955), the Government of Bombay hereby

refers the said dispute for adjudication to the tribunal consisting of Sri M. R. Meher constituted under Government notification, Labour and Social

Welfare Department, No. IDA. 1157(b), dated 12 March, 1957." This was subsequently transferred to me.

The dispute referred to this tribunal is between the Hindu, Bombay and the workmen (working journalists) employed under it in Bombay. The

federation is not a party to the dispute. It was only allowed to represent the workmen employed under Hindu in Bombay. Supporting the dispute

as a representative of the party is an entirely different thing from supporting the dispute as a party. In order to convert an individual dispute into a

collective dispute the other workers besides the individual who has raised the dispute should be a party to the dispute. It is not enough that they

should merely appear on behalf of the individual raising the dispute. Apart from this, I think it has now been well established that the employees of

the same employer in another establishment cannot, by supporting an individual dispute, convert it into an industrial dispute. This question recently

came up for consideration by the Madras High Court in Sri Rama Vilas Service, Ltd., Kumbakonam branch v. State of Madras 1956 I L.L.J.

498. This was a case in which one workman Sri Natesan who was working as a bus driver in an industrial establishment of Sri Rama Vilas

Service, Ltd., at Kumbakonam was dismissed. The head office of this establishment was at Madras. When Sri Natesan raised a dispute, the other

employees of the establishment at Kumbakonam refused to support it. But the Madras union of which the head office employees were members

took up the dispute. The Madras union claimed that some of the employees at Kumbakonam were also its members but this it was held was not

established. The question that had to be decided was whether the support of the other employees of the establishment at Madras would convert

the dispute into an industrial dispute. The Madras High Court held that it could not, and observed that merely because the Madras union was

allowed to represent the worker dismissed at Kumbakonam under S. 36 of the Industrial Disputes Act, would not make that union a party to the

dispute. After citing with approval the decision of the Bombay High Court in N. K. Sen v. Labour Appellate Tribunal 1953 I L.L.J. 6, above

referred to, their lordships observed as follows :-

So, whatever be the extent of the interest evinced in Natesan by the Madras union, and whatever be the justice of the cause, that the Madras

union espoused a dispute between the Madras union and management of the Madras office, would not amount to a dispute between the workers

of the industrial establishment, the Kumbakonam branch of S.R.V.S., Ltd., and its management.

This case appears to me to be on all fours with the present and furnishes a complete answer to Sri Vimadala's contention. Apart from this, if a

more strict view is taken, it can be said that the dispute referred to me here is only between the working journalists employed in the Hindu in

Bombay and the Hindu in Bombay. No other party has been added to this reference and if the employees at Bombay do not support the dispute, it

cannot be converted into an industrial dispute by the support of some persons who are not made a party to the dispute. Recently the Kerala High

Court, in Chittadi Estate Vs. Industrial Tribunal and Others, , had taken the same view. In that case also it was contended by one of the parties

that workers' colleagues sponsoring the dispute need not necessarily be members of the same employer. It was enough if they were engaged in the

same industry. The High Court though it was unnecessary to decide the point and said that as the order of reference made it clear that the dispute

referred to it was between the petitioner and the workmen of the estate at Chittadi, therefore the question of workers of other branches or any

allied industry supporting the dispute does not arise.

26. For the reasons above I am constrained to hold that I have no jurisdiction to decide this reference.